

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LEONARD RICALLS,

Plaintiff,

v.

R. SMITH,

Defendant.

No. 2:22-cv-2322 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On January 25, 2023, the court dismissed plaintiff's complaint with leave to amend. Plaintiff has now filed an amended complaint.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

In his amended complaint, plaintiff alleges that he maintains a plant-based diet for religious reasons. Plaintiff also alleges that once in November of 2020, and then twice in April of 2021, some items included on his dinner tray were not plant-based. He seeks damages for violation of his First Amendment right to free exercise of religion.

1 Plaintiff does not allege he was denied dinner on the dates alleged. Rather, he alleges that  
2 some of the items on his tray were not plant-based so the court concludes that any injury to  
3 plaintiff was de minimis. Even if plaintiff was denied any food that he could eat on three separate  
4 evenings, his injury would still be de minimis and not substantial enough to form the basis of an  
5 actionable claim. See Freeman v. Arpaio, 125 F.3d 732, 737 (9th Cir. 1997) (in order for a  
6 prisoner to state a claim for denial of free exercise of religion, prisoner must allege a substantial  
7 burden on free exercise).

8 For the foregoing reasons, plaintiff's amended complaint fails to state a claim upon which  
9 relief can be granted. As it appears plaintiff cannot state a claim even with amendment, leave to  
10 amend a second time will not be granted.


11 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district  
12 court judge to this case.

13 IT IS HEREBY RECOMMENDED that:

- 14 1. Plaintiff's amended complaint be dismissed for failure to state a claim upon which  
15 relief can be granted; and  
16 2. This case be closed.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, plaintiff may file written objections  
20 with the court. The document should be captioned "Objections to Magistrate Judge's Findings  
21 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
22 time waives the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th  
23 Cir. 1991).

24 Dated: March 6, 2023

25   
26 CAROLYN K. DELANEY  
27 UNITED STATES MAGISTRATE JUDGE